



January 13, 2023

VIA FOIA Online

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom Of Information Act Request for Little Goose Dam Oil Spill Records

Dear FOIA Liaison:

This is a request under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, *as amended*, from The Conservation Angler. Please let me know as soon as possible if you have any questions regarding the scope of this request. Please also respond to this request within the time allowed by law. Time is of the essence in receiving the requested materials.

The Conservation Angler is a non-profit environmental organization that actively informs the public about issues related to wild Pacific salmon and steelhead and their habitat, including wild Columbia and Snake River salmon and steelhead. Through publications, commentary to the press, and the development of an institutional expertise regarding wild salmon and steelhead and their habitat, The Conservation Angler is very involved in the development of programs and policies to protect these resources. The Conservation Angler has lobbied, litigated, and publicly commented on federal and other actions that affect wild salmon and steelhead and their habitat in the Pacific Northwest, including the Columbia River Basin. For example, The Conservation Angler helped establish protections for cold water refugia in the lower Columbia River to benefit migrating salmon and steelhead.

This request concerns records related to the oil spill that occurred at the Little Goose Dam during the summer and/or fall of 2022 (the “Little Goose Dam Oil Spill”) and the National Pollution Discharge Elimination System (“NPDES”) permit for Little Goose Dam on the lower Snake River (Permit No. WA0026786) (the “Permit”).

Pursuant to the FOIA, please provide The Conservation Angler with all records in the custody or control of the U.S. Environmental Protection Agency (“EPA”) that were created,

issued, received, or modified after July 1, 2022 until the date the agency begins to search for this request related to the Little Goose Dam Oil Spill and any other oil spills at dams operated by the Corps that are located on the Columbia or Snake Rivers, including:

1. All best management practices (BMP) reports that EPA received from the Corps related to the Little Goose Dam Oil Spill, as required by section II.B.6 of the Permit.
2. All noncompliance reporting that EPA received from the Corps related to the Little Goose Dam Oil Spill, as required by section III.G.2 of the Permit.
3. All other communications between EPA and the Corps related to oil spills at the Little Goose Dam or actions taken or planned to prevent future spills at Little Goose Dam.
4. All other BMP reports and noncompliance reports that EPA has received from the Corps related to any BMP incidents or noncompliance with the terms of the Permit.
5. All other communications between EPA and the Corps related to oil spills at dams operated by the Corps on the Columbia or Snake River or actions taken or planned to prevent future oil spills at those dams.

For this request, the term “records” refers to documents, correspondence (including inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails including attachments, letters, notes, recordings, telephone records, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

The Conservation Angler is willing to accept any or all of the requested documents in electronic or printed format. You may provide the information electronically by emailing me at rob@theconservationangler.org. Alternatively, you may provide the information on CD-ROM by mail to Rob Kirschner, The Conservation Angler, P.O. Box 13121, Portland, OR 97213.

The Conservation Angler requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor.” 5 U.S.C. 552(a)(4)(A)(iii). The Conservation Angler seeks this information in order to better understand and help the public understand EPA’s role in monitoring and enforcing Permit WA0026786 and protecting water quality in the lower Snake River.

1. *The records concern the operations or activities of the Government.*

The FOIA request is, by its terms, limited to identifiable operations and activities of the Government. As described in the Permit, the Corps is required to submit the requested reports to EPA. It is EPA's responsibility to ensure that the Corps complies with those requirements. Therefore, the records concern the activities of the Government.

2. *The release of the requested records is likely to contribute significantly to public understanding of government operations.*

The requested documents concern, *inter alia*, EPA's enforcement of the Permit and the Corps' compliance with its terms and conditions. These records will provide recent information underlying compliance with the Permit and the steps the Corps and other federal agencies may be taking in response to the Little Goose Dam Oil Spill or other incidents to protect water quality. These records will allow The Conservation Angler and the public to understand and evaluate the Corps' compliance with the Permit and EPA's role in enforcing it.

3. *The release of requested records will contribute significantly to public understanding of the governmental activities.*

Production of the records is likely to contribute significantly to public understanding of government activities. The Conservation Angler has been studying issues related to Columbia and Snake River salmon and steelhead and their habitat, including Columbia River Basin dams and water quality, for many years. The Conservation Angler regularly communicates its studies and findings to its supporters, the public, government officials, legislatures, and other non-profit groups. For example, The Conservation Angler has provided public comments on water quality in the Columbia River Basin, including extensive public testimony to the Oregon and Washington Fish and Wildlife Commissions on cold water refugia in the Columbia River Basin.

The Conservation Angler assists in publishing articles about wild salmon and steelhead and their habitat throughout the Pacific Northwest, including the Columbia River Basin. The Conservation Angler and several other nonprofit organizations jointly publish *The Osprey*, *The International Journal of Salmon and Steelhead Conservation* ("*The Osprey*") (<https://www.ospreysteelhead.org>). *The Osprey* is a quarterly issued journal that has covered scientific and management issues related to salmon and steelhead throughout North America for over thirty years. *The Osprey* has published numerous articles about Columbia and Snake River salmon and steelhead and their habitat.

The Conservation Angler also maintains a website, which includes a blog that regularly includes information regarding wild salmon and steelhead and their habitat throughout the Pacific Northwest, including the Columbia River Basin. The Conservation Angler also distributes information about Columbia River and Snake River salmon and steelhead through social media.

In regard to the current request, The Conservation Angler will use the requested documents to understand whether the pollution prevention measures identified in the Permit are

effective and what steps the Corps may be taking to improve best management practices and protect water quality in the lower Snake River. The Conservation Angler will then use this understanding to further the public's understanding of these very issues through a variety of mediums, including scientific articles and journals, reports, public presentations, social media posts, public presentations, or other means.

The very act of a local citizen group engaging in the review of agency records created or obtained during implementation of federal statutes is "in the public interest." The *per se* significance of the "citizen watchdog" function carried out by The Conservation Angler is evident from federal law interpreting the FOIA. The fee waiver provision was adopted to facilitate access to agency records by what the Court described as "citizen watchdog" organizations. *See Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88-89 (D.C. Cir.1987).

This information is meaningfully informative because, to the best of The Conservation Angler's knowledge, this information is not otherwise available to the public or in the public domain, and this information will therefore significantly contribute to the public's understanding of the subject matter of the request.

4. *Disclosure would not serve a commercial interest of the requestor.*

Disclosure is in no way connected with any commercial interest of the requestor, as The Conservation Angler is a nonprofit, nonpartisan public interest organization. The materials discussed above that are produced by The Conservation Angler, including publications, websites, comments, and newsletters, are freely available to the public at no cost. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "'liberally construed in favor of waivers for noncommercial requestors'" (quoting legislative history)).

Under the FOIA, EPA must make a determination on The Conservation Angler's request within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination consists of a statement whether the agency will comply with the request and the reasons for that determination. It also informs the requester of the right to appeal an adverse decision. Failure to respond in a timely manner shall be viewed as a denial of this request and The Conservation Angler may immediately file an administrative appeal.

If access to any of the requested records is denied, please note that the Freedom of Information Act provides that if only portions of a requested file are exempted from release, the remainder must be released. I request that I be provided with all non-exempt portions that are reasonably segregable. I further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. Your agency's written justification might also help to avoid unnecessary litigation. I reserve our rights to appeal the withholding or deletion of any information and expect that you will list the office and address where such an appeal can be sent.

The Conservation Angler requests issuance of a tracking number. 5 U.S.C. § 552(a)(7)(A). I also request that you notify me of the date of receipt as required by 5 U.S.C. § 552(a)(7)(B)(i). Finally, please provide an estimated completion date (ECD) for the above request. *See* 5 USC § 552(a)(7)(B)(ii). Please contact me if you have any questions about this request, particularly concerning the identity of the records requested. Thank you in advance for your assistance in this matter.

Sincerely,

By: s/ Rob Kirschner
Rob Kirschner